

OPEN MEETING ITEM



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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ORIGINAL

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
INSTALL A WATER LINE FROM THE WELL
ON TIEMAN TO WELL NO. 1 ON TOWERS.

DOCKET NO. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
PURCHASE THE WELL NO. 4 SITE AND THE
COMPANY VEHICLE.

DOCKET NO. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING FOR AN
8,000-GALLON HYDRO-PNEUMATIC TANK.

DOCKET NO. W-04254A-12-0206

IN THE MATTER OF THE RATE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC.

DOCKET NO. W-04254A-12-0207

JOHN E. DOUGHERTY,

COMPLAINANT,

V.

DOCKET NO. W-04254A-11-0323

MONTEZUMA RIMROCK WATER COMPANY,
LLC,

RESPONDENT.

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF A RATE INCREASE.

DOCKET NO. W-04254A-08-0361

Arizona Corporation Commission

DOCKETED

MAR 18 2014

DOCKETED BY

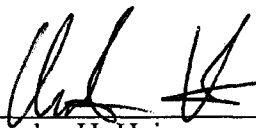
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2 IN THE MATTER OF THE APPLICATION OF
3 MONTEZUMA RIMROCK WATER COMPANY,
4 LLC FOR APPROVAL OF A FINANCING
APPLICATION.

DOCKET NO. W-04254A-08-0362

**STAFF'S NOTICE OF FILING
PROPOSED ORDER**

5 Staff of the Arizona Corporation Commission ("Staff") hereby provides notice of filing the
6 attached proposed order for the Commission's consideration during the March 19, 2014 Open
7 Meeting.

8 RESPECTFULLY SUBMITTED this 18th day of March 2014.

9
10 
11 Charles H. Hains
12 Wesley C. Van Cleve
13 Attorneys, Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17 (602) 542-3402

16 Original and thirteen (13) copies
17 of the foregoing filed this
18 18th day of March 2014, with:

18 Docket Control
19 Arizona Corporation Commission
20 1200 West Washington Street
Phoenix, Arizona 85007

21 Copy of the foregoing EMAILED this
22 18th day of March 2014, to:

23 Todd C. Wiley - twiley@fclaw.com
24 Patricia Olsen - patsy@montezumawater.com
25 John E. Dougherty, III - jd.investigativemedia@gmail.com
John Hestand - john.hestand@azag.gov
Jana.tabeeek@azag.gov

26 Copy of the foregoing mailed this
27 18th day of March 2014, to:

28 Todd C. Wiley
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4 Rimrock, Arizona 86335

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9 Office of the Attorney General
10 1275 West Washington
11 Phoenix, Arizona 85007

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BEFORE THE ARIZONA CORPORATION COMMISSION

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BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF A FINANCING
APPLICATION.

DOCKET NO. W-04254A-08-0362

DECISION NO. _____

ORDER

Open Meeting
March 19, 2014
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Montezuma Rimrock Water Company, LLC ("Montezuma" or "Company") is an Arizona public service corporation authorized to provide water service in a community near Rimrock, Az. Montezuma has approximately 205 water customers.

2. On May 31, 2012, the Company filed an application with the Arizona Corporation Commission ("Commission" or "ACC") to increase its rates for water service. The Company also filed three financing applications. The Company subsequently filed several amendments to its rate application, and on April 12, 2013, the Company amended its financing applications.

3. In Utilities Division Staff's ("Staff") review of the rate application, Staff concluded that Montezuma is not recovering sufficient amounts in rates to cover expenses and support lease payments on the arsenic treatment facility and associated building. Based on a regulatory audit of the Company's finances, Staff recommended an increase in base rates as well as two surcharges for certain planned indebtedness.

4. Hearings on the base rate application and on other consolidated dockets were held on June 20-21 and June 24-26, 2013. Final briefs were submitted on September 20, 2013. A Recommended Opinion and Order has not yet been issued.

5. The Company's arsenic treatment facilities are currently in operation. On December 27, 2013, the Company filed a compliance report indicating that the Company had filed more than

1 one year of arsenic level data and that Montezuma is now in compliance with Arizona Department of
2 Environmental Quality's ("ADEQ") administrative order relating to arsenic.

3 6. On March 7, 2014, Montezuma filed a request for emergency/interim rate relief. In its
4 filing, the Company states that it does not have sufficient revenue to make the lease payments on its
5 Arsenic Treatment Facility to the leasing company, Financial Pacific Leasing. On March 13, 2014,
6 the Company docketed a copy of a demand letter from Financial Pacific which stated that an
7 immediate payment of \$2,824.80 is required in order to prevent acceleration of the lease and a
8 demand of payment in full in the amount of \$47,781.92. The Company's filing also indicates that
9 Financial Pacific Leasing has contacted the Company and requested voluntary surrender of the
10 Arsenic Treatment Facility for non-payment.

11 7. On March 11, 2014, Intervenor John Dougherty filed a response to the Company's
12 application for interim rate relief. Mr. Dougherty's response referred to the three criteria discussed
13 by Attorney General Opinion No. 71-17. Mr. Dougherty does not believe (1) that a sudden change
14 has occurred bringing on financial hardship, (2) that the Company has provided evidence
15 demonstrating its insolvency, and (3) that the Company's ability to maintain adequate service is in
16 doubt. In conclusion, Mr. Dougherty asks the Commission to install an interim manager based on the
17 contention that interim management could access certain grant funds to finance arsenic treatment for
18 Montezuma.

19 8. Based upon concerns regarding the possible threat to public health and safety
20 presented by the potential loss of arsenic treatment, Staff contacted Financial Pacific to confirm the
21 status of the leasing company's plans regarding the non-payment. Staff spoke with representatives of
22 Financial Pacific. Based upon those discussions, Staff confirmed that Financial Pacific intends to
23 repossess the arsenic treatment facilities in the event that the Company continues nonpayment on the
24 lease.

25 9. Staff discussed with Financial Pacific the pendency of the base rate application and the
26 recommendations that had been made. Likewise, Staff discussed the possibility of interim rates
27 sufficient to permit Montezuma to bring its account current. Financial Pacific indicated that, if rates
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1 were put in place (on an interim basis and followed with permanent rate relief), and if Montezuma's
2 account were made current, it would not pursue remedies unless Montezuma again falls into
3 delinquency.

4 10. Staff further inquired as to the lease for the building that houses the arsenic treatment
5 facility. The Company leases the building from Nile River Leasing, L.L.C. On March 13, 2014, the
6 Company provided a statement to Staff indicating that it has an overdue balance of \$2,515.34 as of
7 March 13, 2014.

8 11. Total indebtedness to both leasing companies is \$5,340.14.

9 12. If Financial Pacific were to pursue repossession or other similar remedies, it is
10 possible that such measures could be concluded relatively quickly.

11 13. Staff would further note that the evidence adduced at hearing demonstrates that
12 Montezuma's financial condition has effectively precluded essentially all other alternative avenues of
13 financing arsenic treatment at this point.

14 14. Staff notes that the Company was already authorized to pursue Water Infrastructure
15 Finance Authority of Arizona ("WIFA") financing to fund construction of arsenic treatment. Staff
16 has reviewed the feasibility of financing from WIFA and concluded that, owing to the additional
17 costs of having to meet National Environmental Policy Act compliance, the cost of WIFA financing
18 is prohibitively expensive to both the Company and its ratepayers.

19 15. Additionally, evidence presented at hearing further indicates that the Company does
20 not currently have sufficient cash flows to obtain a standard loan. Consequently, it is reasonable to
21 conclude that the current lease for arsenic treatment facilities represents the only remaining cost-
22 effective means for Montezuma to obtain arsenic treatment for the drinking water it supplies to its
23 ratepayers.

24 16. The current state of ADEQ compliance for the Company is contingent upon providing
25 continuous arsenic treatment of its drinking water supplies. Evidence supplied in the hearing on the
26 base rate application illustrates that the Company has narrowly avoided penalties by ADEQ for the
27 lengthy period it took to implement arsenic treatment. The Company may face ADEQ compliance
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1 issues if its arsenic treatment equipment were abruptly removed at this point. Such compliance issues
2 could further exacerbate the financial distress confronting the Company.

3 17. Financial Pacific is apparently poised to pursue various measures against Montezuma
4 for nonpayment on the arsenic treatment facility lease. Such measures may occur very quickly,
5 providing little time for response.

6 18. The substantial financial consequences to the Company and, more importantly, the
7 threat to quality of service to ratepayers justify emergency/interim rate relief.

8 19. Rates collected pursuant to an emergency surcharge are subject to true-up once
9 permanent rates are approved in Montezuma's application for a base rate increase. Amounts
10 collected beyond what are approved in the base rate case would be subject to refund.

11 20. Staff does not believe that the appointment of an interim manager would be
12 appropriate at this time. With regard to the potential to access WIFA grant funds, it is Staff's
13 understanding that the grant funds have been depleted for a number of years.

14 21. Staff recommends approval of an emergency surcharge in the amount of \$10 per
15 customer per month which would provide additional revenues of approximately \$2,000 per month.
16 Staff further recommends that the surcharge should take immediate effect and that the Company
17 should be authorized to do a special billing to accelerate collection of the surcharge. Staff
18 recommends that the Company should be required to post a bond in the amount of \$10.00.

19 22. Further, Staff recommends that the Company be ordered to apply the funds collected
20 under the surcharge solely to payment of the arsenic treatment facility and the associated building
21 leases.

22 **CONCLUSIONS OF LAW**

23 1. The Commission has jurisdiction over Montezuma Rimrock Water Company and over
24 the subject matter herein pursuant to Article XV, section 3 of the Arizona Constitution.

25 2. Appropriate notice of the proceeding and an opportunity to be heard have been given
26 in the manner prescribed by law.

1 3. The threat of repossession of essential arsenic treatment facilities in the event of
2 nonpayment of amounts owed on the lease for the arsenic treatment facilities constitutes a sudden
3 change or hardship for Montezuma.

4 4. The demand for payment on past due amounts owed on the lease for arsenic treatment
5 and the threat of repossession of the arsenic treatment facilities jeopardize Montezuma's ability to
6 provide arsenic free drinking water to its ratepayers.

7 5. The facts and circumstances demonstrate that Montezuma faces an emergency
8 situation that justifies emergency/interim rate relief.

9 6. Staff's recommendations herein are reasonable and should be adopted.

10 7. The Commission, having reviewed the Company's request and the responsive filings
11 made by Intervenor Dougherty and Staff, finds that it is in the public interest to permit an interim
12 emergency surcharge to preserve the quality of service to ratepayers and to maintain the status quo
13 during the pendency of the application for a base rate increase.

14 **ORDER**

15 IT IS THEREFORE ORDERED that Montezuma Rimrock Water Company may implement
16 an emergency surcharge of \$10 per month per customer.

17 IT IS FURTHER ORDERED that the emergency surcharge will terminate upon the effective
18 date that rates approved in Montezuma Rimrock Water Company's application for a base rate
19 increase may be charged.

20 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company may utilize funds
21 collected pursuant to the interim emergency surcharge only toward payment of its arsenic treatment
22 facility and associated building leases.

23 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company is authorized to
24 undertake a special billing to initiate the surcharge immediately upon the effective date of this
25 Decision.

26 IT IS FURTHER ORDERED that rates collected pursuant to the emergency surcharge are
27 subject to true-up once rates are approved in Montezuma Rimrock Water Company's application for
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1 a base rate increase. Amounts collected beyond what are approved in the permanent base rate case
2 are subject to refund.

3 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company shall mail notice of
4 the approved interim emergency surcharge to its customers, in a form and manner acceptable to Staff,
5 to accompany the special billing set forth in Finding of Fact No. 21.

6 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company shall obtain a
7 performance bond, or other comparable financial instrument in the amount of \$10, and shall provide
8 the original to the Commission's Business Office for safekeeping and file copies with Docket Control
9 as a compliance item in this docket prior to charging the interim surcharge.

10 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company is put on notice that
11 the emergency surcharge put into effect by this order is interim and solely intended to maintain the
12 status quo during the pendency of the permanent base rate application. The Commission's approval
13 of interim rates does not prevent the Commission from approving base rates in the permanent rate
14 case that may preclude full recovery of amounts related to any lease entered into by Montezuma
15 Rimrock Water Company.

16 IT IS FURTHER ORDERED that this decision shall become effective immediately.

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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO: \CHH

SERVICE LIST FOR: Montezuma Rimrock Water Company
DOCKET NOS. W-04254A-08-0361; W-04254A-08-0362; W-04254A-11-0323;
W-04254A-12-0204; W-04254A-12-0205; W-04254A-12-0206; W-04254A-12-0207

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